

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LABORERS PENSION TRUST FUND -
DETROIT & VICINITY, ET AL

Plaintiffs,

CASE NO. 03-71340

vs.

HONORABLE PATRICK J. DUGGAN
HONORABLE STEVEN D. PEPE

MICHAEL WALLER, INDIVIDUALLY AND D/B/A
TRI-COUNTY BASEMENT SPRAY COATING &
CRACK REPAIR,

Defendants.

RENEWED ORDER PERMITTING THE ADDITION OF NISA BARBER AS DEFENDANT
AND
ORDER TO SHOW CAUSE

On December 20, 2005, the Court entered an order holding in abeyance the proceedings against Nisa Barber until entry by the Bankruptcy Court of an order which indicated whether Defendant Michael Waller's bankruptcy petition stays the present matter as to Ms. Barber (Dkt. #89). Moreover, the order held in abeyance the deadlines set in this Court's November 14, 2005, Order, until entry of an appropriate order by the Bankruptcy Court.

On August 21, 2006, Plaintiffs filed their Notification of Automatic Bankruptcy Stay and stated that the Bankruptcy Court has terminated the automatic stay provisions of 11 U.S.C. §362 as it may relate to defendant Nisa Barber individually and d/b/a Professional Basement Spraycoating and has expressly provided, inter alia, that Plaintiffs "may proceed as plaintiffs. . . against defendant Nisa Barber, or any other nondebtor entity" (Dkt. #90). Therefore, the proceedings against Nisa Barber shall proceed and the dates indicated below will replace those listed in the Court's November 14, 2005, Order.

For reasons stated in the court record during the November 9, 2005, hearing IT IS

ORDERED that:

1. Pursuant to Fed. R. Civ. P. 69(a), incorporating MCL § 600.6128(1)(b), MCL § 600.6128(2), and MCL § 600.6104(1), Nisa Barber individually and Nisa Barber d/b/a/ Professional Basement Spraycoating are added as Defendants in the collection proceedings and in future proceedings of this case.

2. Plaintiff's certificate of service on his Petition to Add Nisa Barber d/b/a Professional Basement Spraycoating as a Defendant was served on August 10, 2005, "upon defendant and Nisa Barber via their counsel David A. Monroe, by U.S. Mail (postage paid) and via facsimile to (517) 552-0895." It is unclear whether David Monroe is Nisa Barber's attorney or has authority to accept service for her. At the hearing on November 9, Mr. Monroe appeared and opposed the motion, acknowledged the proceedings against Ms. Barber were not stayed by the recent bankruptcy filing of Michel Waller, and Mr. Monroe did not disclaim representing her in this matter as would have been expected if his appearance and arguments were not on her behalf as her attorney. If Mr. Monroe is going to act as attorney for Nisa Barber and Nisa Barber d/b/a/ Professional Basement Spraycoating in this matter now that she and Professional Basement Spraycoating are being added as defendants, and if she waives any further service than that provided on August 10, 2005, that shall be indicated by her or her attorney signing the acknowledgment of receipt and waiver of service attached to this order. If that is not accomplished on or before **December 29, 2006**, Plaintiff shall serve a copy of his Petition to Add Nisa Barber d/b/a Professional Basement Spraycoating as a Defendant upon Ms. Barber and Nisa Barber d/b/a/ Professional Basement Spraycoating pursuant to Rule 4, and if she again fails to waive service Plaintiff may seek the cost of service under Rule 4(d)(5).

3. Nisa Barber individually and d/b/a/ Professional Basement Spraycoating shall show cause on or before **January 31, 2007**, why she and Nisa Barber d/b/a/ Professional Basement Spraycoating should not be added as named defendants in the judgment against Michael Waller, or otherwise held to account for the judgment in this case, under the theory of successor liability and the theory that she and Professional Basement Spraycoating are operating as Michael Waller's alter ego.

4. Once the service and representation issues are resolved a Discovery deadline and other scheduling will be set.

SO ORDERED.

Dated: December 5, 2006
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2006, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Robert A. Farr, Jr., David A. Monroe, and I hereby certify that I have mailed United States Postal Service the paper to the following non-ECF participants: Rolland R. O'Hare, 1000 Farmer St., Detroit, MI 48226

s/ James P. Peltier
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